The existing universal service and access charge regimes would also seriously threaten the currently competitive long distance marketplace if SBC were permitted to provide long distance now. SBC would be in a perfect position to impose an anti-competitive "price squeeze" on other IXCs, by continuing to impose overpriced access charges for a critical input to long distance service while offering lower long distance rates. SBC's long distance affiliate would not be affected by such pricing, however, because any amounts that the long distance affiliate pays the LEC affiliate for access are simply intra-corporate transfers that have no absolute effect on the company's overall bottom line. Competition between independent IXCs and SBC's long distance affiliate cannot succeed if SBC has this kind of cost advantage.

In addition, as WorldCom pointed out in the Access Charge Reform proceeding, 88/ most access services offered by SBC and other incumbent LECs are not currently subject to any competition. While we strongly support opening access charages to competition, through the introduction of full local competition, there are certain access services that are likely never to become fully competitive. For example, vigorous competition is not likely to develop for terminating access in the foreseeable future because the party placing long distance calls and that party's IXC

88/ Access Charge Reform, CC Docket Nos. 96-262 et al., Comments of WorldCom, Inc. (January 29, 1997); Reply Comments of WorldCom, Inc. (February 14, 1997).

have little or no ability to influence the called party's choice of local carrier. 89/ Accordingly, until the Commission fully implements steps to reduce terminating carrier access charges to cost, those charges would pose a substantial impediment to long distance competition if SBC were permitted to provide long distance.

In sum, the Commission must not allow SBC or any other BOC to enter the in-region interLATA long distance marketplace until reform of universal service and access charges are fully implemented. The risks of SBC's prematurely foreclosing local competition and leveraging its local monopoly in the long distance marketplace are simply too great.

89/ Even originating access service, per se, will not become competitive, and will remain a bottleneck for stand-alone IXCs. But -- assuming local competition becomes a reality, including competition through the use of combinations of unbundled network elements in a "platform"configuration -- full service providers (competitive providers of integrated local and long-distance service) will be able to avoid SBC's originating access service, and will be able to exert competitive pressure on originating access rate levels -- but only after vigorous local competition develops.

CONCLUSION

The FCC should dismiss SBC's application because it fails to satisfy the requirements for Track A and because SBC is ineligible to seek interLATA authority pursuant to Track B. The FCC therefore need not reach the issue of SBC's checklist compliance. If it does, the FCC should deny the application because SBC has failed to satisfy at least four checklist items -- unbundled elements, loops, switching, transport, and operations support systems.

Respectfully submitted,

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May 1, 1997

CERTIFICATE OF SERVICE

I, Barbara E. Clocker, hereby certify that on this 1st day of May, 1997, copies of the foregoing "Comments of WorldCom In Opposition To SBC Application For InterLATA Authority In Oklahoma" were served by hand delivery or by overnight delivery, to the following:

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RESPONSE OF WORLDCOM, INC. TO THE DEPARTMENT OF JUSTICE

On November 21, 1996, the Department of Justice ("Department" or "DOJ") invited interested parties to supply their views on "several important questions concerning the impact of Bell entry on: (1) competition in the provision of local services; (2) competition in the provision of long distance services; and (3) competition in the provision of bundled or integrated services."[1] The letter indicates that the Department plans to use these submissions to assist it in developing an analytical framework for evaluating Section 271 applications submitted by Bell operating companies ("BOCs") seeking to provide long distance services.[2] WorldCom, Inc. ("WorldCom") respectfully submits the following in response to the Department's invitation.

Introduction

WorldCom applauds the Department's effort to develop an appropriate analytical framework to use in evaluating BOC Section 271 applications and appreciates the opportunity to supply these comments. Congress recognized the important role played by the Department in creating and maintaining competitive markets when, in crafting the landmark Telecommunications Act of 1996 ("1996 Act"), the Congress required that the Federal Communications Commission ("FCC") consult with the Department when reviewing a BOC

[1] Letter from Joel I. Klein, Acting Assistant Attorney General, Department of Justice, Antitrust Division, to All Interested Parties, November 21, 1996.

[2] WorldCom notes that the BOCs already provide a significant amount of long distance services. Even under the AT&T consent decree, the BOCs were permitted to provide intraLATA long distance service; with the passage of the 1996 Act, BOCs were also permitted to begin providing out-of-region long distance service and long distance service in conjunction with their cellular services. The discussion of BOC entry that follows refers to their entry into the in-region interLATA long distance market pursuant to section 271 of the 1996 Act.

application and further required that the FCC give the views of the Department "substantial weight."[3]

Moreover, rather than dictating a particular antitrust standard for the Department to apply in its evaluation, Congress permitted the Department to apply "any standard the Attorney General considers appropriate."[4] As the Department seeks to determine the appropriate standard to apply, WorldCom believes that two fundamental considerations must underlie the Department's analysis. First, the Department must adopt a standard that considers the impact of BOC long distance entry on local competition and full service competition in addition to long distance competition. Second, the Department must adopt a standard that recognizes that BOC entry will eliminate the incentive for BOCs to cooperate in the development of local and full service competition. Following a description of these two considerations, WorldCom will address the specific questions set forth in the Department's letter.

A. THE DEPARTMENT MUST ADOPT A STANDARD THAT CONSIDERS THE IMPACT OF BOC LONG DISTANCE ENTRY ON LOCAL COMPETITION AND FULL SERVICE COMPETITION IN ADDITION TO LONG DISTANCE COMPETITION

First, the Department must recognize that the standard which governed BOC entry under the consent decree that caused the divestiture of AT&T in 1984 is no longer sufficient to determine the merits of BOC entry into long distance. The consent decree's Section VIII(c) standard focused on whether the BOC's possession of market power with respect to local exchange services and exchange access services gave the BOC the incentive and ability to

[3] 1996 Act § 271(d)(2)(A).
[4] Id.

impede competition in the long distance market.[5] The focus of Section VIII(c) on the affect of BOC entry on competition in the long distance market, although still very relevant, is too narrow for the ambitious transition to full competition envisioned by Congress in 1996 Act. The consent decree addressed a highly segmented telecommunications marketplace: local carriers provided local exchange service, long distance carriers provided long distance service. Section 251 of the 1996 Act, along with the "competitive checklist" of Section 271, require that local exchange service and exchange access service be opened to competition. These provisions of the 1996 Act are creating a paradigm shift that will, in large part, end the market segmentation artificially imposed by the AT&T consent decree and other regulatory devices. When the shift is complete, no longer will local carriers provide only local service and long distance carriers provide only long distance service. Instead, most telecommunications carriers are likely to provide both local service <u>and</u> long distance service, and likely will sell service as a single product: telephone service.[6] Indeed, once the BOCs enter long distance, BOC competitors will have to offer integrated packages of local and long distance to compete with the BOCs. Thus, the traditional local market and long distance market segmentation will largely disappear to be replaced with a new "full service" market. Indeed, a BOC application to provide long distance services could be viewed as an application to enter the full service market.

Congress recognized that the 1996 Act would dramatically alter the telecommunications market in a manner that might render traditional antitrust standards (including the consent

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[5] <u>United States v. AT&T</u>, 552 F.Supp. 131, ___ (D.D.C. 1982), <u>aff'd mem. sub. nom. Maryland v. United States</u>, 460 U.S. 1001 (1983).

[6] Telephone services may also be packaged with other service offerings, such as wireless telephony and Internet access.

decree's VIII(c) standard) inappropriate. Congress thus provided the Department with the flexibility to adapt to the new environment by permitting the Department to evaluate BOC entry using any standard that the Department considers appropriate. In this new environment, it is no longer sufficient to examine only the potential effect of that entry on competition in the discrete long distance market.[7] Rather, in the new world created by the 1996 Act, the Department must also examine the effect of BOC entry on competition in the full service market.

The ramifications of this change are significant. In evaluating BOC applications to enter long distance prior to the 1996 Act, much of the focus was on the BOC's incentive and ability to behave anti-competitively with respect to its long distance competitors, usually through discrimination in the provision of exchange access services. Although that will remain one aspect of the inquiry, in a full service environment the evaluation must be much broader than just the provision of exchange access services. In the new paradigm created by the 1996 Act, full service competitors will very often depend on the BOC for the network elements or wholesale services used in the provision of the local exchange service component of the competitors' full service packages. Indeed, Section 251 of the 1996 Act recognizes this dependence by requiring that incumbent local exchange carriers make, inter alia, network elements and wholesale services available to requesting carriers. As a consequence of this additional dependence on the BOC for inputs in the provision of local service, the BOC can thwart full service competition by discriminating against its competitors either in the provision

[7] The impact of BOC entry on long distance competition remains a significant consideration, however, because some companies may attempt to specialize in providing only long distance service and should not be foreclosed or impeded from doing so by monopoly bottlenecks. In addition, because long distance service will be an important element of full service competition, if long distance competition is impeded, full service competition will also be frustrated.

of exchange access services, in the provision of necessary components for local service, or both. If full service competitors cannot efficiently provide either long distance or local exchange service as a result of this discrimination, there will be no full service competition. Therefore, the standard adopted by the Department to evaluate BOC entry must examine the effect of such entry on long distance competition, on local competition and on full service competition.

B. THE DEPARTMENT SHOULD ADOPT A STANDARD THAT RECOGNIZES THAT BOC ENTRY WILL ELIMINATE THE INCENTIVE FOR BOCS TO COOPERATE IN THE DEVELOPMENT OF LOCAL COMPETITION AND FULL SERVICE COMPETITION

The second fundamental consideration that must underlie the Department's development of the appropriate standard to apply when evaluating a BOC application to provide landline long distance service is that, once a BOC is granted permission to enter the long distance market in its own region, it will no longer have any incentive to cooperate in the development of local competition or full service competition. As discussed above, new entrants to the local market will be dependent on the incumbent local exchange carriers, including the BOCs, for network elements, wholesale services and other components of local service obtained pursuant to section 251 and 252 of the 1996 Act. Because complying with the requirements of section 251 and 252 of the Act is a prerequisite to satisfying the competitive checklist of section 271,[8] which in turn is a prerequisite for long distance authority, the BOCs, prior to their receipt of section 271 authority, have some incentive to cooperate in opening the local exchange to competition, making competition in both the local market and the full service market possible.

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[8] 1996 Act § 271(c)(2)(B).

Once a BOC has been granted section 271 authority, however, its incentives change dramatically. Instead of being motivated to cooperate in the development of local competition in order to gain long distance authority, the BOC, having already won its long distance prize, will now have every incentive to undermine its brand new competitors. Unfortunately, the need of competitors -- local, long distance, and full service -- to rely on the BOC for components necessary for the provision of service will clearly not expire once the BOC is given long distance authority.

The standard adopted by the Department must account for the dilemma posed by this abrupt reversal of BOC incentive to cooperate with the development of competition and the continuing dependence on the BOC by its competitors. Section 271(d)(6) permits the FCC to impose a variety of sanctions against a BOC that falls out of compliance with the conditions necessary for long distance entry. Although this may be a tool to correct blatant anticompetitive behavior, subtle forms of discrimination that may have severe consequences will be more difficult to police. A better approach would ensure that marketplace competition is firmly established and appropriate safeguards are in place and working in practice <u>before</u> the BOCs' incentives are reversed.

WorldCom urges the Department to be mindful of both the need to examine the impact of BOC entry on full service competition and the reversal of BOC incentives as it develops the standard it will use to evaluate BOC long distance applications. WorldCom will attempt to demonstrate the role of these two fundamental considerations as it addresses the specific questions raised by the Department.

1. What potential benefits, if any, do you foresee resulting from Bell Company entry into long-distance? Specifically, what do you see as (a) the present state of competition in the provision of long distance services and the likely development of further competition absent near term Bell entry; and (b) the likely competitive impact of near term Bell entry into the long distance market?

Competition in the provision of long distance services is already substantial and growing. For example, on a revenue basis, AT&T accounted for about 90% of all toll revenues in 1984. By the end of 1995, AT&T's share had fallen to about 53%. During that same time period, MCI grew from 6% to about 18% and Sprint grew from about 2.5% to about 10%. WorldCom, which was a tiny single state carrier in 1984, captured about 5% of the nationwide toll revenues in 1995. Smaller carriers, which accounted for only 3% of the market in 1984, now have over 14% of the market.[9]

The "smaller carrier" category includes almost 600 long distance providers.[10] The competition presented by these smaller carriers should not be taken lightly. For example, one of these smaller carriers, Frontier Corporation, reported 1995 revenues in excess of $1.5 billion[11] and is in the process of constructing its own nationwide fiber optic network.[12] Similarly, LCI International, has long distance revenues in excess of one billion dollars a year and is growing at a rate of 67% per year.[13]

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[9] See "Long Distance Market Shares, Second Quarter 1996," Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, September 1996.

[10] Id., at 2.

[11] Id. at 3.

[12] "Frontier Corp. Plans to Invest in Phone Net," The Wall Street Journal, October 22, 1996.

[13] "LCI International Reports Record Third Quarter Results," LCI Press Release, October 23, 1996.

It should also be noted that section 271(b)(2) of the 1996 Act permits the BOCs to provide out-of-region long distance services upon enactment. At least, Bell Atlantic, NYNEX, and Southwestern Bell have announced plans to provide wireline, out-of-region long distance services.[14] Presumably, the BOC market share for these out-of-region long distance services will also be growing in coming years.

Proponents of near term BOC entry often describe the long distance market as an "oligopoly" or "cartel" comprised only of AT&T, MCI and Sprint. In their view, long distance entry by the BOCs would break apart this oligopoly and lead to lower consumer prices. This view conveniently ignores the presence of WorldCom and the hundreds of "smaller carriers," including LCI and Frontier, which collectively account for more market share than MCI. The presence of these carriers means that no oligopoly can possibly exist and that prices paid by consumers must be set at competitive levels.[15] In fact, over thirty million American consumers changed long distance carriers last year,[16] a customer turn over rate that is impossible in all

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[14] "Bell Atlantic Launches Long-Distance Service in Michigan, North Carolina, and Texas," Bell Atlantic Press Release, July 30, 1996; "NYNEX Files to Offer Long Distance Service in Four States," NYNEX News Release, June 3, 1996; "SBC Communications Introduces Its First Landline Long-Distance Service in Chicago, Boston, Washington, D.C., Baltimore, Upstate New York, Central Illinois," SBC Communications Press Release, December 2, 1996. Curiously, although these BOCs should be expert in providing local telephone services, in not one of these areas where the BOCs are providing out-of-region long distance services are the BOCs attempting to compete against their BOC brethren in the local market. Either they are reluctant to precipitate market raiding with sizeable competitors or they realize just how difficult it will be to enter the local market.

[15] See "AT&T is Being Bitten On the Ankles," Business Week, August 5, 1996, p. 26 ("AT&T won as many as 1 million customers from MCI and Sprint in the first half of the year, but volumes still dropped. Tiny new rivals are grabbing customers and blindsiding the telecom giant.").

[16] See Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier, Order, FCC 95-427, rel. October 23, 1995, at ¶ 63.

but the most competitive service markets. Further, the BOCs themselves already provide out-of-region long distance services -- in areas where they do not possess the advantages that flow from their monopoly status -- that are just beginning to contribute to the competitive pressures in the market.

Another important facet of the competition in the long distance market is the significant amount of facilities competition. Unlike the local market, where there is currently only one ubiquitous network, there are four nationwide long distance networks owned and operated by AT&T, MCI, Sprint and WorldCom. Press reports have indicated that perhaps two additional national networks are under construction.[17] The existence of multiple networks ensures that no carrier is dependent on any other for the provision of network facilities. It also ensures that even those carriers with no facilities of their own will receive competitive pricing and quality service when obtaining network facilities or capacity from an underlying carrier. If pricing is not suitable or service is not satisfactory, the reseller can simply take its business elsewhere.

Absent near term BOC entry into the provision of in-region long distance, it can be expected that competition in the long distance market will continue to grow and that smaller carriers will put increasing competitive pressure on the larger carriers. If, however, the BOCs are granted near term entry into the in-region long distance market before appropriate conditions exist in the local market, it is likely that long distance competition will be stunted because near term in-region entry will bring with it the incentive and ability for the BOC to discriminate against its competitors.

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[17] "Frontier Corp. Plans to Invest in Phone Net," The Wall Street Journal, October 22, 1996, p. __.; "Network Expansion to Meet the Demands for Long Distance Capacity," IXC Communications, Inc. Press Release, September 4, 1996.

In addition, to the extent that the exchange access fees charged by the BOCs to their long distance competitors greatly exceed the actual cost of providing exchange access (and even the BOCs concede that they do), the BOCs will have a significant and unique cost advantage to subsidize their entry into long distance and price below other carriers' costs in all markets. Even if a BOC complies with the requirements of section 272(e)(3), the true price of access facing a BOC for in-region service offerings is economic cost.[18] Al Binford, Bell Atlantic's long distance president, recently told analysts that Bell Atlantic expects that 28% of its in-region long distance revenues will go to paying access charges.[19] This is a sharp drop off from the current long distance industry standard where access charges exceed 40% of revenues. NYNEX is already exploiting this access cost advantage with respect to out-of-region offerings that terminate within its territory by pricing those long distance services at 4 cents per minute less than services terminating outside the NYNEX region.[20]

Near term BOC entry into long distance before local market conditions are appropriate will also have an adverse impact on the full service competition.[21] The BOCs will have the

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[18] When a BOC parent charges its long distance affiliate no less for access than it charges unaffiliated carriers, in compliance with the requirement of section 272(e)(3), the parent collects the excess revenue which flows to the combined company bottom line. The true price of access for the combined company is economic cost.

[19] "Big Players Shape Strategies to Enter Competitive Markets," Communications Daily, November 26, 1996, p. 5. This project appears to also include out-of-region terminating access, where Bell Atlantic would have no access advantage. As a result, Bell Atlantic's in-region cost advantage is likely understated. In-region access is likely to run at substantially less than 28% of revenues.

[20] Communications Daily, December 11, 1996, p. 3

[21] Even though the section 271 in-region provisions have been thought of in terms of authority for the BOCs to provide long distance service, in reality the grant of section 271 authority will permit the BOC to enter the full service market. The BOCs will not be competing for new long distance customers; instead, they will be attempting to add long distance to the services purchased by existing local customers.

same incentives to discriminate in this market but now can affect both the long distance and the local portion of a competitor's full service offering.

Moreover, the negative market impact may not even be the result of deliberate action on the part of the BOC. As the BOCs seek to enter the full service market, they must convince their existing local service customer base to change their long distance service from their current carrier to the BOC. Customers are accustomed to changing long distance carriers and the industry has, over the past twelve years, developed detailed procedures that permit customers -- scores of millions of customers per year -- to change long distance service effortlessly and seamlessly -- usually within 24 hours. Thus, GTE, an independent local telephone company which is already providing long distance service within its service territory, is capable of converting 6,000 to 7,000 customers a day to its long distance service[22] and the automated capability exists for them to turn up many more.

Conversely, as long distance carriers or others attempt to enter the local market, they must first convince customers to change the provider of their more critical and essential local service -- something most customers have never done before -- and then request that the BOC move the customer from the BOC network to the network of its competitor. Unlike changing long distance carriers, procedures are only now being developed to permit the changing of local carriers, and the outlook for those systems is not encouraging. For example, in mid-1996, Bell Atlantic told Pennsylvania regulators that it would only be able to change 25 unbundled loops per week per carrier.[23] Information provided by Pacific Telesis to the California Public

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[22] Communications Daily, November 26, 1996, p. 5.

[23] Bell Atlantic Statement No. 2.1 (Rebuttal Testimony of Albert) in Application of MFS Intelenet of Pennsylvania et al., Docket Nos. A-310203F0002. Ultimately, state regulators declined to permit Bell Atlantic to implement these provisioning limitations. However, after

Utilities Commission ("CPUC") does not provide a much better outlook. Pacific Telesis told the CPUC that it would be able to handle less than seven hundred customers per day for the entire base of local competitors.[24] And this is just for customers who are changing on a resale basis where only a software change and no physical rerouting of facilities is required.[25] Even when capacity constraints are eliminated, other important operational issues may remain.

Full service competition can not exist in an environment where the BOC can take millions of its competitors' long distance customers a year while systems limitations limit its competitors to capturing only several thousand of the BOC's local customers.

Near term BOC entry before there is viable local competition would only serve to exacerbate this situation. Resources that are necessary for the provisioning and operational support of the BOC's new local carrier customers would be siphoned away at a critical juncture to focus on providing service to the new BOC long distance customers. The already limited provisioning constraints, such as those cited by Bell Atlantic and Pacific Telesis, would worsen significantly and the BOCs would have no incentive to correct flaws in their operational support mechanisms.

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having attempted to impose these very confining limitations, the burden should be on Bell Atlantic to demonstrate that it will have the capability to accommodate the same magnitude of local customers changing carriers as it can long distance customers.

[24] Letter from J.A. Gueldner, Vice President Regulatory, Pacific Bell, to Commissioner Gregory P. Conlon, President, California Public Utilities Commission, November 5, 1996.

[25] Similarly, although NYNEX has announced the availability of new systems to switch customers to resellers, it has acknowledged that it does not yet have such systems in place for automated ordering of unbundled network elements. Communications Daily, December 12, 1996, p. 8. Clearly, such systems must be in place for there to be competition in the local and full service markets.

Before the BOCs are permitted to provide long distance service, there must be comparable opportunities for competitors to provide local service -- not just with respect to provisioning service but also with respect to customers' ability to change carriers. Unless customers can change their local carrier as easily and as quickly -- and in the same numbers -- as they can change long distance carriers, there can be no full service competition.

2. What integrative efficiencies -- to producers or consumers -- are likely to result from the Bell Companies' ability to offer both long distance and local service? To what extent can those efficiencies be achieved by other firms through implementation of the local competition provisions of the Telecommunications Act? In what ways, if any, would Bell Company long distance entry affect the ability of other firms to achieve such efficiencies?

To the extent that integrative efficiencies result from the Bell Companies' ability to offer both long distance and local service, those same efficiencies can also be achieved by other firms in their offerings of combined local and long distance service. Such efficiencies can be realized, however, only through the full implementation of the local competition provisions of the Telecommunications Act in compliance with the rules and regulations adopted by the FCC in its local competition order[26] on August 1, 1996. If the local competition provisions of the Telecommunications Act and the FCC's rules are not fully implemented, local competition and therefore full service competition will not take place.[27]

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[26] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order, FCC 96-325 (rel. August 8, 1996)("First Report and Order").

[27] It is absolutely critical to the development of full service competition that new entrants have the ability to combine network elements to provide any telecommunications service pursuant to Section 251(c)(3). Contrary to the FCC's rules on this issue, the Georgia and Ohio state commissions have ruled in recent arbitration proceedings that, for all practical purposes, AT&T may not combine the network elements of the involved BOC. Until these decisions are changed, it will be difficult for full service competition to take hold within these jurisdictions.

Without local competition, the BOCs' so-called efficiencies are simply an unfair competitive advantage owing to their monopoly and to the fact that no other firm can offer both local and long distance service together. Without full service competition to drive lower prices in all segments of the telecommunications market, the BOC will have no incentive to flow through the benefits of any integrative efficiencies to its customers. Instead, the BOC is likely to divert those efficiencies to its shareholders or use those efficiencies to cross-subsidize its competitive offerings in an anticompetitive manner. Over the long term, only vibrant full service competition will enable consumers to receive the benefits of any integrated efficiencies that result from the BOCs' ability to offer both long distance and local service.

3. How do you anticipate that the Bell Companies will provide their long distance services (e.g., using their existing network, building additional network facilities, reselling other carriers' services, acquiring existing long distance carriers)? To what extent is this expectation relevant to an assessment of the risks and potential benefits of entry?

WorldCom anticipates that the BOCs will provide their long distance services through a combination of using their existing in-region networks, reselling other carriers' services or leasing their facilities, and acquiring existing long distance carriers. It is not clear that, at least initially, the BOCs will find it necessary to construct additional long distance facilities.

For long distance services that are purely in-region, it appears that the BOCs already possess significant interLATA facilities. Even though the AT&T consent decree prohibited the BOCs from providing interLATA service to consumers, it did permit the BOCs to build and use interLATA long distance networks for the BOCs' internal administrative purposes. Evidence discovered during a Bell South rate case in Florida demonstrated that Bell South's "administrative network" was clearly built to support its in-region long distance entry, and not

Bell South's internal needs. Once activated, this "administrative network" is capable of carrying as much interLATA traffic as the largest long distance carrier in Florida. [28] The BOCs can use these networks to provide retail long distance service with the flick of a switch.[29]

For long distance traffic that originates or terminates out-of-region, the BOCs are likely to resell the services or lease the facilities of other carriers. As noted above, there are at least four national long distance networks (owned by WorldCom, AT&T, MCI, and Sprint) operating today and one or more additional nationwide networks under construction today (Quest/Frontier and IXG). The BOCs can easily turn to the existing long distance carriers to obtain service or facilities on very competitive terms.[30] Several of the BOCs (and several independent local telephone companies) are already providing out-of-region long distance service in this manner.

Given that the BOCs already possess extensive in-region interLATA networks and that many competitive alternative networks exist to carry their out-of-region traffic, it is unlikely that the BOCs will need to expend any resources in the near term to construct significant additional long distance facilities. Nevertheless, as a BOC's long distance market share grows, a BOC may decide, as other long distance carriers have in the past, that costs and quality can be better controlled by owning out-of-region long distance facilities rather reselling the service or leasing

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[28] See Proceeding of the Florida Public Service Commission, Docket 92-0260-TL.

[29] Moreover, the Department should be concerned with the BOCs' ability to interconnect each others in-region "administrative network" which may lead to preferential dealing among the BOCs.

[30] For example, Bell South has entered into an agreement to use AT&T's long distance network at a rate that Bell South says is "at the low end" of one to two cents per minute. Bell South also acknowledged that the rate is less than half what big commercial customers pay. "BellSouth Corp. Awards AT&T Contract," The Wall Street Journal, June 20, 1996.

the facilities of another carrier. At that point, the BOC may decide to either construct its own long distance facilities or to acquire an existing long distance carrier that owns facilities.

The relative ease with which the BOCs can add long distance service is a critical factor in the assessment of the risks of BOC entry, particularly with respect to the full service market. With the BOC's existing in-region interLATA facilities, and the ready availability of several competing long distance networks to supply service or facilities in other areas, adding long distance service to the array of telecommunications service that a BOC already offers to its local telephone customers will not be a difficult proposition. Within its region, the BOC already provides local service to virtually the entire customer base and, through years of long distance competition, those customers have grown accustomed to changing long distance carriers -- as noted above some thirty million changed long distance vendors last year.[31]

In contrast, carriers attempting to enter the local market face a much more daunting task, whether they enter as purely local carriers or as long distance carriers seeking to add local service to their product mix. The new entrants to the local market will, for the most part, be dependent on the BOCs for network elements or wholesale services. The BOCs entering the long distance market will benefit from more than a decade of competition in that market and from the MFJ's and the FCC equal access requirements, which have fostered the development of systems and infrastructure necessary to support long distance resale and to permit customers

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[31] Thus, in less than 10 months since the Telecommunications Act terminated its consent decree, GTE has been able to sign up 750,000 long distance customers in its service territories and is adding long distance customers at a rate of 6,000 to 7,000 a day. Communications Daily, November 26, 1996, p. 5. In addition, analysts are reporting that Southern New England Telephone has won 30% of the long distance market within its territory in Connecticut. Communications Daily, December 3, 1996, p. 1.

to be shifted easily among long distance carriers. In contrast, new entrants to the local market will suffer because there has been no development of similar systems or infrastructure in the local exchange.[32] To be sure, such systems and infrastructure are being developed by the BOCs, but by regulatory mandate and not by the force of desire driven by competition. Even with the best of intentions on the part of the BOC this would not be an easy task; both the BOC and the new entrants are breaking new ground. But the BOC is not likely to be well intentioned toward its new competitors nor is it likely to exert effort to accommodate its prospective local and full service competitors absent the promise of long distance entry. If that award is vested prematurely -- before adequate systems and infrastructure are in place to ensure that carriers have equal opportunities to compete for customers in all markets -- the BOC will lose all incentive to create and maintain such systems and infrastructure. Competitors whose local and long distance services are dependent on the BOC's network elements or wholesale services will find their orders delayed, service quality deteriorate, and prospective customers languish as they wait for the BOC to convert their carrier. As a consequence, competition in all markets -- local, long distance and full service -- will wither.

[32] For example, as noted above, although millions of subscribers can and do change their long distance provider every month, the BOCs are indicating that their systems will not be able to handle even thousands of customers changing local service providers every month. Even once they develop the operational support systems mandated by the FCC, those systems must be tested and proven workable on a widespread basis. It is also interesting to note that the BOCs have asked the Eighth Circuit Court of Appeals to overturn the FCC's requirement that LECs provide operational support systems.

4. What are the risks that the Bell Companies' market power in local markets could be used to hamper competition in the provision of any telecommunications service, including both local and long distance services? Will the Bell Companies' ability or incentive to hamper competition be affected by their entry into long distance? Will the entry of the Bell Companies into long distance affect the incentives of long distance companies to expand into local service?

As discussed above, there are significant risks that the BOCs' market power in local markets can and will be used to hamper competition in the provision of telecommunications services, including both local and long distance services. Most new entrants to the local market will be completely dependent on the BOC for the network elements and wholesale services necessary to provide local service.[33] Long distance providers will continue to have little choice but to use the BOC for significant amounts of exchange access; even when exchange access service is provided through an alternative provider, that alternative provider is likely to be relying on BOC network elements to supply the access. Full service carriers will also be dependent on the BOC for substantial components of their local and long distance service. Under such circumstances, the BOC clearly has the ability to hamper competition in the local, long distance and full service markets through a wide variety of means, including, among others, delayed provisioning of service, inferior service quality, and faulty billing records. Many of the techniques for discrimination can be quite subtle but have a devastating effect.

As noted earlier, consumers are quite accustomed to switching long distance service, but have no experience in making a competitive choice of local service provider. In addition,

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[33] Among the issues that must be considered by the Department is the pricing of network elements and wholesale services adopted by state commissions. A BOC that submits an application from a state that has adopted an embedded cost approach to the pricing of network elements may have greater opportunity to price discriminate against competitors than a BOC from a state that has adopted pricing guidelines similar to those put forward by the FCC.